

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON NATURAL RESOURCES AND COMMERCE

Call to Order: By **CHAIRMAN RICK RIPLEY**, on January 27, 2005 at
8:00 A.M., in Room 317-C Capitol.

ROLL CALL

Members Present:

Rep. Rick Ripley, Chairman (R)
Sen. Ken (Kim) Hansen, Vice Chairman (D)
Sen. Gregory D. Barkus (R)
Sen. Bob Hawks (D)
Rep. Walter McNutt (R)
Rep. John L. Musgrove (D)

Members Excused: Rep. Rosalie (Rosie) Buzzas (D)

Members Absent: None.

Staff Present: Britt Nelson, Committee Secretary
Doug Schmitz, OBPP Representative
Barbara Smith, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:
Executive Action: HB 2

EXECUTIVE ACTION ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY

Barbara Smith discussed the handouts she provided to the committee members. The first handout was a spreadsheet depicting the action taken on the 26th. The second sheet she discussed was the market analysis for the Broadband Pay Plan for environmental specialists. The last announcement she made was concerned with a subcommittee meeting discussing Fish, Wildlife and Parks fee increases.

[EXHIBIT\(jnh21a01\)](#)

[EXHIBIT\(jnh21a02\)](#)

She also provided the committee with handouts which she did not discuss.

[EXHIBIT\(jnh21a03\)](#)

[EXHIBIT\(jnh21a04\)](#)

[EXHIBIT\(jnh21a05\)](#)

SEN. BARKUS expressed concern about the rate issue. He stated that the Department had been looking for 25% but in their budget had noted a rate of 24%.

Tom Livers, Deputy Director of the DEQ, responded that the way the legislature was able to control proprietary spending was to set a cap. He indicated that they typically asked for a cap that would allow them negotiating room in case something comes up. He noted that in all years except in 2004 they have been able to stay under the cap by a full percent. He noted that it would be possible for them to come in at a 24% negotiated rate.

SEN. BARKUS indicated that he understood that but what he was asking was why they had asked for something that was more than they really needed. He claimed that it made the other Decision Packages which the Department had brought before them questionable.

Mr. Livers commented that he understood SEN. BARKUS' concerns but indirect caps work by setting absolute maximum limits. He declared that they were not trying to deceive the committee they were just trying to work with the indirect cap. The reason he gave for wanting a cap that was higher than anticipated, was the thought of possible increases that weren't expected.

CHAIRMAN RIPLEY asserted that he had also been disturbed by their request. He charged the Department with keeping the best

information from the committee. He claimed that it had been a difficult decision and he had lost faith with the Department.

Mr. Livers apologized. He reiterated that it was not the intention of the Department to deceive or over-request. He understood the committee's concerns and said that they would make the 24% cap work even if it put them in a difficult position. He reiterated that they had not meant to confuse the situation or trick the committee into giving them more than they needed.

SEN. HAWKS asked if the cap was the general cap that is used.

Mr. Livers replied that the general cap he believed **SEN. HAWKS** was discussing was the cap for the overall budget. If this was the case then it would not be the same cap.

SEN. HAWKS followed up asking what the risk would be of lowering the cap. He wondered what would happen if they were up to or slightly over the 24% allowed.

Mr. Livers explained that the way indirect rates works with their primary funding source, the EPA, is that they are not allowed to over-negotiate what they have been allowed with the cap. At the same time however, they are also required by state law to maximize as much as they can get from the federal agency recruitment costs. Since they have those requirements that have to look at all of the costs for everything that is covered by the proprietary rate and determine the funding for them and make sure that it comes in under the legislatively mandated cap and then negotiate that with EPA to make sure that they pay it. Whatever the cap is set up at they would have the authority to negotiate to it.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 14.1}

SEN. HAWKS suggested that the odds were not huge that they would have to go over 24% but there was some probability that it would happen.

Mr. Livers agreed with **SEN. HAWKS'** statement. He indicated that if they had been approved at 25%, they would have still tried to negotiate to the 24% level. Essentially they were just looking for flexibility by asking for the 25% rate.

SEN. HAWKS stated that he didn't feel like there was great risk by approving the 24%; but they did run a risk of losing potential funds that they might have received if they were given the flexibility of a 25% rate.

CHAIRMAN RIPLEY agreed with SEN. HAWKS about the need for federal funds but reiterated that his feelings were that the committee had been deceived. What he had wanted was for the Department to tell the committee that they were expecting 24% and give the reasons why they were asking for 25%.

Barbara Smith followed up on SEN. HAWKS' cap question. She noted that the proprietary rates were in the budget and they did apply to the overall spending cap which the senators were dealing with on a budget-wide basis.

Richard Oppen, Director of the DEQ, appreciated the concerns of the committee. Personally, he felt that they were not trying to deceive the committee by asking for 25%. He was sorry that it had come across that way. Their intention was to give themselves a little more flexibility in negotiations. He contended that they would make the 24% work but that it might cost them some in the lack of flexibility.

{Tape: 1; Side: A; Approx. Time Counter: 14.1 - 19.5}

REP. MUSGROVE asked to examine the legislative issue of New Proposal 4014. He asked if SB 143 required any coordinating or contingency language.

Ms. Smith explained that SEN. LIABLE'S bill allowed the DEQ \$2 million out of the Orphan Share Account. She stated that in order for them to spend it, they would have to have a corresponding appropriation in HB 2, because of this there would have to be some corresponding language. She mentioned however, many instances on the record where a bill such as that passed and no corresponding HB 2 language was added.

REP. MUSGROVE assumed that meant they would not be able to spend the money. He stated that the Orphan Share Account would be a much better way to finance this than would the General Fund.

Motion: **REP. MUSGROVE moved that CONTINGENCY LANGUAGE INDICATING THE FUNDING SOURCE FOR SB 143 BE ADDED TO DP 4014.**

Discussion:

SEN. BARKUS opposed the lack of planning. He felt that they need to have a plan before they request \$2 million. He insisted that there was no one ill and no contamination of the ground water so he did not see the reason they needed to move ahead with the project until they had a more concrete plan.

{Tape: 1; Side: A; Approx. Time Counter: 19.5 - 24.1}

REP. MUSGROVE asked SEN. BARKUS if he had talked with SEN. LIABLE and ascertained the reasons why he was putting forth the bill.

SEN. BARKUS replied that SEN. LIABLE had been asked to carry the bill by the Department. He asserted that SEN. LIABLE was not familiar with the situation at all since he was not even from the area.

Sandi Olsen, Administrator of the Remediation Division of the DEQ, remarked that the Division had a statement of work prepared so if they received authority they could proceed with the contracting process. The statement indicates the goals of gathering the data and how it would be used. She also noted that SB 143 was intended to be a transfer of Orphan Share Funds to Hazardous Waste CERCLA funds and EQPF. She informed the committee that the \$2 million was a late addition. They had asked SEN. LIABLE to carry a companion bill last session for the transfer of funds so, because SEN. LIABLE was knowledgeable with how the funds work, he was asked to carry SB 143.

{Tape: 1; Side: A; Approx. Time Counter: 24.1 - 27.4}

Ms. Smith addressed the committee next. She had received information from the Department regarding language that could be tied to the appropriation; however, she had not been able to review it.

REP. MUSGROVE requested further information and a chance to look at the language.

At this point REP. MUSGROVE withdrew his motion to adopt contingency language without objection.

Doug Schmitz stated that they would be tracking the legislation and if SB 143 would proceed and be eventually approved, HB 2 could be amended in Free Conference Committee to include the \$2 million. By going this route it might give the committee time to review the information and allow the Department to prepare additional information.

{Tape: 1; Side: A; Approx. Time Counter: 27.4 - 29.8}

CHAIRMAN RIPLEY requested that Art Compton address **DP 2016 -- Wetlands Grant Authority**. He wanted to know if it was the same grant as the Wetlands Legacy Program that was contained in the audit.

Art Compton, Administrator of the Planning, Prevention and Assistance Division of the DEQ, replied that the Wetlands Grant Program was audited. He felt that it supported the same program but was unsure.

Susan McEachern, Administrative Officer of the Planning, Prevention and Assistance Division, answered that it was the same program.

CHAIRMAN RIPLEY asked for the Division to address the audit.

Tom Livers expressed that there had been a finding in the audit that the Department had received some funding for wetlands litigation work and the fund had not been spent down. The audit suggested that the Department transfer the funds to the Legacy Program within the Department of Fish, Wildlife and Parks. He admitted that they had been slow in accomplishing the transfer.

{Tape: 1; Side: A; Approx. Time Counter: 29.8 - 34.1}

CHAIRMAN RIPLEY asserted that the audit had also said the transfer should be in the weeks immediately following the audit. He wanted to know if it had been transferred yet.

Mr. Livers responded that it had been transferred.

CHAIRMAN RIPLEY questioned if the DP would also be in cooperation with FWP or if there would be audit problems with it as well.

Mr. Livers indicated that the DP was a different funding source and the transfer was of money they had no authority to spend.

Mr. Compton commented that the issue in the DP was separate from the Legacy Program audit issue. He mentioned that the Wetlands Grant Program, the 319 Program, and the Biomass Energy Program were all chronically late being provided their federal funds. He felt that the \$330,000 was a direct result if a federal grant arrival.

Ms. McEachern informed the committee that they normally received their Wetlands Grants in May and the award they were discussing came up in August after the fiscal year ended.

{Tape: 1; Side: A; Approx. Time Counter: 34.1 - 39.1}

EXECUTIVE ACTION ON THE DEPARTMENT OF ENVIRONMENTAL QUALITY:
PERMITTING AND COMPLIANCE DIVISION

From this point forward REP. MUSGROVE voted for REP. BUZZAS by proxy.

Motion: REP. MUSGROVE moved that DP 5001 -- Air Operating Adjustments BE ADOPTED.

Discussion:

CHAIRMAN RIPLEY inquired how the proprietary rate would be affected by approving this rate.

Barbara Smith answered that the DP included \$77,042 in 2006 and \$83,729 in 2007 of indirect adjustments. She reminded that they approved the rate yesterday as a cap and they could, if they chose to, adjust that amount.

Steve Welch, Administrator of the Permitting and Compliance Division, stated that the indirect rates were budgeted at 24%.

SEN. BARKUS was concerned because the numbers Ms. Smith had provided were not adding up.

Ms. Smith indicated that there were other charges included in the package, regular salaries, lab equipment, and personal car mileage.

CHAIRMAN RIPLEY wondered what would happen to the overall percentage rate if they were to lower the \$77,042 by \$10,000.

Ms. Smith replied that it would take \$10,000 of adjustments out of the package and would be a minor adjustment to the overall percentage rate.

Vote: Motion carried unanimously by voice vote.

Motion: REP. MCNUTT moved that DP 5002 -- Industrial and Energy Minerals Bureau Operating Adjustment BE ADOPTED with the segregation of \$15,173 for Retirement as OTO into a new proposal leaving the \$5,394 per year for overtime in this DP.

Discussion:

Ms. Smith addressed the Legislative Fiscal Division's issue concerning retirement payout expenditures. She asserted that

retirement payout expenditures were not part of the base year. She indicate that if the committee approved the adjustment they would be placing the anticipated payout for the retirement in the base since it is not singled out as a one-time-only occurrence.

CHAIRMAN RIPLEY asked if it was normal to anticipate retirement pay outs.

Ms. Smith pronounced that out of the three agencies she reviewed the DEQ was the only one that anticipated a pay out. However, she noted that in 2003 there was a large appropriation given to Fish, Wildlife and Parks for that same purpose.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 1}

Mr. Livers addressed the issue of overtime and the anticipated pay out for the retirement. He indicated that the overtime in the program was not covered by the operating costs. With respect to the retirement they knew that they had a long-term employee who was retiring and they wanted to provide the pay out.

Steve Welch agreed with Mr. Livers. He reiterated that there was one employee that was holding out for a decision in order to retire in anticipation of the pay out.

REP. MUSGROVE suggested separating out the retirement portion of the DP to make it one-time-only.

Ms. Smith agreed that it would be possible.

REP. MUSGROVE urged that the committee deal with this issue as OTO to give the agency a little latitude.

SEN. BARKUS asked how much of the DP was tied up with the retirement.

Ms Smith notified the committee that it would be \$15,173. She noted that the issue was whether the committee wanted to put that money into the base.

SEN. BARKUS wanted to know what the termination pay was.

Steve Welch responded that the employee was entitled to a full pay out of the annual leave that had not been taken and also to 25% of their sick leave that had not been used.

Doug Schmitz added that the pay out at retirement has always been an unfunded liability faced by agencies. He mentioned two

instances in the past where the legislature had approved pay outs in advance: 1) Fish, Wildlife and Parks which was close to \$700,000, and 2) the Department of Agriculture because they had little turnover.

{Tape: 1; Side: B; Approx. Time Counter: 1 - 6.5}

CHAIRMAN RIPLEY supported splitting the DP into two different DPs.

Ms. Smith commented that retirement pay out would be an issue that would start impacting all agencies as the average age of the state employee approached 50.

REP. MUSGROVE asserted that Montana would be in for a problem if there is no logical way put forth to deal with this issue. He felt that it was a necessary budget item and part of the contractual obligation in place.

CHAIRMAN RIPLEY obligated Ms. Smith to split the DP. He then addressed the overtime issue.

REP. MCNUTT noted that it was a threefold increase to what they had spent in 2004.

Mr. Welch presented that in the base year there was not enough money to pay for all of the overtime requested. They want to have the option for overtime costs or compensatory time at one and a half times pay. He mentioned that it was a program staffed by only four people who covered the entire State.

SEN. BARKUS wanted to know if there was a provision for approving the benefits and funding them in the years during which the actual expense occurs so that actual budget numbers from past bienniums were available.

{Tape: 1; Side: B; Approx. Time Counter: 6.5 - 11}

Ms. Smith informed the committee that it had been presented to the departments as an unfunded liability. As there are people approaching retirement the departments have to adjust their personal services in order to cash them out. She clarified her issue as being concerned with whether the pay out was a base expenditure or not.

SEN. HAWKS asked for a clarification. He wondered if the overtime was being asked for the same program out of which the

individual was retiring; and if so, was the retirement the reason for the overtime request.

Mr. Welch responded that it was not for the same program.

REP. MCNUTT remarked that he inferred during the presentation that the Department had had to hold positions open because of retirement and it had been some time before they could fill the position because of funding.

Mr. Welch concurred with **REP. MCNUTT'S** statement.

{Tape: 1; Side: B; Approx. Time Counter: 11 - 14.2}

SEN. MCNUTT asked what would happen with the remaining money if the \$5,394 was budgeted and only \$2,000 was spent.

Ms. Smith explained that it would be an underspent appropriation and the next year's reporting it would not show up as spent.

REP. MCNUTT followed up asking where the money would go if it wasn't spent.

Ms. Smith replied that it could be moved between accounts.

CHAIRMAN RIPLEY questioned the increase because of the possibility of transferring the money into a different account.

SEN. HAWKS asked for a clarification of the motion.

CHAIRMAN RIPLEY responded that **REP. MCNUTT** had not set the dollar amount for the overtime yet.

{Tape: 1; Side: B; Approx. Time Counter: 14.2 - 18.1}

SEN. BARKUS asked if the \$38,249 increase in indirect charges due to increased staff included overtime or if it was just the indirect charges.

Barb Smith agreed that it was just the indirect charges associated with the base adjustment. The indirect rates were attached to the increased staffing level whether or not the position was filled or not although they could not charge it unless there were expenditures.

REP. MCNUTT felt comfortable leaving the overtime in especially if they were doing a one and a half time trade off.

Judy Hansen expressed that the package was confusing. There are two programs within the bureau, the Open Cut Program, or the Sand and Gravel Program, was the four-person program for which retirement was being requested. The other part of the bureau was the Coal Permitting Program which is approximately 15 full-time-equivalents. The \$5,394 for overtime was not just for one of these programs but for both which means that it would be spread between 20 employees.

CHAIRMAN RIPLEY noted that they had not addressed overtime anywhere else in the agency for people who work on the Coal Projects.

Ms. Hansen explained that the Coal Permitting Program was contained within DP 5002. The FTE for Oil and Gas Division would be a different package. She informed the committee that this DP was the full overtime package.

{Tape: 1; Side: B; Approx. Time Counter: 18.1 - 23.4}

Doug Schmitz assumed that REP. MCNUTT wanted to have the retirement as a OTO reducing the original request to \$11,133 and the retirement would be included in 2006.

Barb Smith informed the committee that she had already written the second DP so if they wanted to move DP 5002 they could immediately move to the new proposal.

Vote: Motion carried 5-2 by voice vote with SEN. BARKUS and REP. RIPLEY voting no.

Motion/Vote: SEN. BARKUS moved that NP 5027 -- Termination Pay OTO Restricted to first year of the biennium BE ADOPTED. Motion carried unanimously by voice vote.

Motion: REP. MUSGROVE moved that DP 5003 -- Environmental Management Bureau Administration Operating Adjustment BE ADOPTED.

Discussion:

SEN. BARKUS asked for a clarification on the potentially proposed legislation to correct the situation.

{Tape: 1; Side: B; Approx. Time Counter: 23.4 - 30.8}

Steve Welch responded that there was no proposed legislation that would fix the problem as far as he was aware.

SEN. BARKUS wondered why \$17,000 was out of General Funds.

Mr. Welch explained that the Major Facility Siding Act was funded by the General Fund.

CHAIRMAN RIPLEY followed up asking why it wasn't State Special Fund since it was paid out of fees that were collected.

Mr. Welch remarked that the fees they received from the Major Facility Siding Act were minimal. He noted that it was only a one person program who had been historically funded by General Funds.

Vote: Motion carried unanimously by voice vote.

Motion: **SEN. HANSEN** moved that DP 5004 -- Hard Rock and MFSA Projects Operating Adjustments BE ADOPTED.

Discussion:

REP. MUSGROVE asked if the motion included language for restricted biennium.

CHAIRMAN RIPLEY answered that it did.

Vote: Motion carried unanimously by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 30.8 - 36.9}

Motion: **REP. MUSGROVE** moved that DP 5005 -- Public Water and Subdivision Operations Adjustments BE ADOPTED.

Discussion:

Barbara Smith clarified that the non-employee travel from the base year was \$20,926. She also mentioned that the DP included some overtime.

SEN. BARKUS was curious about the \$173,000 for training and the \$173,000 for travel.

Mr. Welch responded that it was all part of the Operator Reimbursement Program.

SEN. BARKUS asked how many systems in the State would be provided services.

Mr. Welch responded that there were 2,000 water supply systems not all of which take advantage of the program because of the restrictions keeping water systems which serve over 3,300 from using the program.

CHAIRMAN RIPLEY wondered if they were anticipating an increase in the amount of people who would be utilizing the training.

Mr. Welch explained that they wanted to be ready if there was an increase.

SEN. BARKUS inquired how much was in the base for travel.

Ms. Smith reported that there was \$20,926.

Vote: Motion carried unanimously by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 36.9 - 46.3}

Motion/Vote: REP. MCNUTT moved that DP 5006 -- Water Protection Bureau Operating Adjustments BE ADOPTED. Motion carried unanimously by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 46.3 - 48.6}

Motion/Vote: SEN. BARKUS moved that DP 5007 -- PCD Administration Operating Adjustment BE ADOPTED. Motion carried unanimously by voice vote.

{Tape: 1; Side: B; Approx. Time Counter: 48.6 - 49.6}

Motion/Vote: SEN. HAWKS moved that DP 5008 -- Waste and Underground Tank Management Operating Adjustment BE ADOPTED. Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 0.8}

Motion: SEN. BARKUS moved that DP 5010 -- Water Protection Bureau Wastewater Permitting with three FTE and appropriate adjustments to the dollar amounts BE ADOPTED.

Discussion:

Barbara Smith noted that the package had been reduced by the Department and she had provided the information the day before. She mentioned that the DP was reduced to three FTE.

Vote: Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 0.8 - 2.4}

Motion: REP. MUSGROVE moved that DP 5011 -- Air Permitting of Oil and Gas Production BE ADOPTED.

Discussion:

SEN. BARKUS wanted to know what the newly discovered source of pollution was.

Mr. welch explained that the pollution source was an issue throughout the western US. He claimed that it wasn't a new source but oil and gas industry and the oil wells and facilities that were emitting pollutants beyond the acceptable threshold. The emissions have been overlooked until recently. The Division would be looking at 400-900 new permits that would have to be issued to control these sources.

{Tape: 2; Side: A; Approx. Time Counter: 2.4 - 4.8}

SEN. BARKUS asked if these permits pertained to oil and gas wells.

Mr. Welch responded that it was not always just the well but the associated facilities. The permits may include the well, the transfer points and those types of areas.

CHAIRMAN RIPLEY wondered if the facilities had been permitted for a one time permit and now they were up for renewal.

Steve Welch explained that they were not permitted at all. He mentioned a bill carried by SEN. ROUSH that would address the issue, trying to allow the Department to get a handle on the permitting.

CHAIRMAN RIPLEY asked for clarification. He wanted to know how the renewal would work if they had never been permitted in the past.

Mr. Welch informed him that they were not renewed they are good to pay annual fees.

Ms. Smith interjected that in her comment she misused the term renewal what she had meant was that they would have to pay an annual fee on the entities. She expressed that her point was

that they can't just have the requested three FTE for a two-year period because the work would continue past two years.

{Tape: 2; Side: A; Approx. Time Counter: 4.8 - 8.9}

Mr. Welch added that they were looking for the three FTE but also for contracted services. They hope, as they move forward, that the workload, as far as new permits are concerned, would be going down by 50-75% a year so the three additional FTE would be able to handle it unless coal bed methane increases.

CHAIRMAN RIPLEY clarified that the three FTE would cover 120 permits which meant that it would take about two to three months to get permitted.

Mr. Welch reiterated that approximately 125 permits per year would be issued and they would take about two to three months.

{Tape: 2; Side: A; Approx. Time Counter: 8.9 - 10.2}

Ms. Smith informed the committee that the contracted services would be \$137,500 in 2006 and \$120,000 in 2007. She professed that given the amount of workload she did not feel that it needed a comment.

REP. MCNUTT mentioned that the gas plants had stopped flaring their wells. He interpreted what Mr. Welch was saying to mean that the permitting process would not interfere with these companies drilling wells.

Mr. Welch affirmed REP. MCNUTT'S statement. He said that they would be working with them to make them to permit them according to statute.

SEN. BARKUS left at 10:20.

{Tape: 2; Side: A; Approx. Time Counter: 10.2 - 12.5}

Vote: Motion carried 5-2 by voice vote with SEN. BARKUS and REP. RIPLEY voting no with CHAIRMAN RIPLEY voting by proxy for SEN. BARKUS.

Motion: SEN. HANSEN moved that DP 5013 -- Air Quality Research Technical Study-OTO and Restricted BE ADOPTED.

Discussion:

Barbara Smith commented that the DP was not biennial the request was for 2006 only.

SEN. BARKUS returned at 10:30.

Vote: Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 12.5 - 15.1}

Motion: SEN. HAWKS moved that DP 5015 -- Public Water Supply and Subdivision FTE BE ADOPTED.

Discussion:

REP. MUSGROVE asked if it was an overtime package.

Ms. Smith referred to DP 5005 which had overtime in the same bureau. She commented that the committee had to decide whether there should be an FTE, overtime, both, or have the Department address why both are being requested.

REP. MUSGROVE requested that the Department address the issue.

Steve Welch addressed the Decision Package. He provided a similar rational to the one given for DP 5005. He indicated that the program was facing increasing trends. He suggested that they needed the authority for the FTE because of an increase that was coming. He mentioned that there was great demand for face-to-face interactions with engineers and water quality specialists in order to get the public water supply systems approved. They need these FTE and the overtime to get the job done.

{Tape: 2; Side: A; Approx. Time Counter: 15.1 - 19.1}

REP. MCNUTT asked if part of the increase was due to the rural water systems that were being placed across the top of the state.

Mr. Welch reported that it was part of the workload but all across the state there are new large subdivisions going in and additions to existing systems.

CHAIRMAN RIPLEY expressed concern at approving overtime and FTE.

REP. MUSGROVE commented that this was one of the areas in which the Department would be in a bind. If they are kept restricted

they can't do their job and if they don't get the work done they get in trouble. He voiced that the package was good as it was.

Vote: Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 19.1 - 22.1}

Motion: REP. MCNUTT moved that DP 5016 -- Increase Grants to Counties BE ADOPTED.

Discussion:

SEN. HAWKS questioned why Junk Vehicle taxes are paid when getting a license and if that was separate from this DP.

Steve Welch explained that it was part of the revenue for the program.

Vote: Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 22.1 - 24.4}

Motion: REP. MCNUTT moved that DP 5018 -- Permitting and Compliance Division-Vehicles BE ADOPTED.

Discussion:

REP. MCNUTT asked if the DP had to be one-time-only.

Doug Schmitz responded that it did not.

Vote: Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 24.4 - 25.5}

Motion/Vote: REP. MUSGROVE moved that DP 5024 -- Permitting and Compliance Division Data Management-OTO and Restricted BE ADOPTED. Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 25.5 - 26.7}

Motion: REP. MCNUTT moved that DP 5025 -- Subdivision Training and Review RESTRICTED OTO BIENNIAL BE ADOPTED.

Discussion:

Ms. Smith indicated that it was for contracted services for education.

Vote: Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 26.7 - 28.2}

Motion: SEN. HANSEN moved that DP 5020 -- Hazardous Waste -- Brownsfields Biennial Authority BE ADOPTED.

Discussion:

CHAIRMAN RIPLEY wanted to know how the program consisted of for encouraging reuse.

Mr. Welch explained that the Brownsfields Grant from the EPA was directed towards education and outreach anything that would identify to the general public how they could reuse generation of hazardous waste. The EPA expanded the use of the grants from restoration cleanup of industrial sites to a preventative program.

CHAIRMAN RIPLEY requested a sample of a Brownsfields site.

Richard Opper spoke of Lewistown Montana where there was a site called Brewery Flats, an industrial area, where there was a railroad switching yard and an oil refinery. As a community Lewistown applied for a Brownsfields funds for cleanup.

{Tape: 2; Side: A; Approx. Time Counter: 28.2 - 36}

Doug Schmitz added that it was a budget amendment that had arrived during the interim. He expressed that they were new monies to the State of Montana that the Department was proposing to use for the purpose that the EPA awarded them. He mentioned that in the eastern United States there are a lot of old abandoned warehouses etc. that fell into the category of Brownsfields. These locations have been redeveloped and renovated. He suspected that the EPA was trying to do the same thing in Montana.

REP. MCNUTT referenced the \$175,000 in 2006 and the \$175,000 in 2007. He was curious if it was a biennial appropriation.

Barbara Smith responded that there was an error.

Vote: Motion carried unanimously by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 36 - 40.9}

Motion: SEN. HAWKS moved that DP 5022 -- Opencut Additional Staff BE ADOPTED.

Discussion:

SEN. HAWKS wondered if there was legislation for the permitting fees or if it was necessary to have legislation to change those fees.

Steve Welch stated that there was legislation to create a program to deal with the fees. He explained that it was currently funded by Revolving Indemnity Trust funds. He noted that there were around 1900 sites scattered around the State that needed looking at.

SEN. HANSEN mentioned the 1900 sites. He wanted to know the increase in sites that would be a justification for the addition 2.75 FTE.

Mr. Welch asserted that there was not an increase in amount but in the complexity and controversy surrounding the new applications which are 150-200 every year. They need the FTE to respond to the questions and perform a complete analysis.

REP. MCNUTT asked if the DP included activities such as going onto the oil field and testing the site.

{Tape: 2; Side: A; Approx. Time Counter: 40.9 - 48.2}

Mr. Welch reported that it may or may not depending on who the operator was. If there is a general contractor in the area there are most likely permitted sites on which he would operate. A permitted operator would be able to open a site without having to go through the complete permitting process.

{Tape: 2; Side: A; Approx. Time Counter: 48.3 - 49.9}

CHAIRMAN RIPLEY wondered how the Department had arrived at 2.75 FTE.

Mr. Welch explained that .25 FTE were for the coal side of the bureau to make a complete position in that bureau. The remaining 2.5 were for the Open Cut Bureau.

Vote: Motion carried unanimously by voice vote.

Ms. Smith wanted to know what the HB number was.

Mr. Welch responded that it was HB 361.

Motion: REP. MUSGROVE moved that DP 5026 -- RHODIA Settlement BE ADOPTED.

Discussion:

CHAIRMAN RIPLEY asked why the funding was not switched to State Special Funds.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 4.3}

Judy Hanson, Fiscal Officer of the Permitting and Compliance Division of the DEQ, reported that as these settlements come into the State they go into State Special Funds through an 08 account which is a non-budget account that goes out of HB 2 as part of the settlement.

CHAIRMAN RIPLEY inferred that this issue would not be addressed again because it would not be in HB 2.

Ms. Hanson affirmed his interpretation. She mentioned that in the overview there was a slide on non-budgeted activity where the Department receives funds from those revenues.

Barb Smith asked for a clarification from Ms. Hanson. She noted that it appeared some other Special Revenue Funds contained funds from forfeited bonds. She wanted to know what the difference was.

Ms. Hanson explained that it was a settlement originally. They decided with the Budget Office that it should stay in State Special because of the bond settlements and bond forfeitures case.

{Tape: 2; Side: B; Approx. Time Counter: 4.3 - 7}

CHAIRMAN RIPLEY said that although it was a settlement it was not bond.

Ms. Hanson agreed with his statement. She noted that it was a criminal case for the Department.

CHAIRMAN RIPLEY wondered who would be responsible for tracking the money once it left HB 2.

Ms. Hanson responded that the Department would be responsible. She expressed that the court provided \$1.8 million to the Hazardous Waste Program and it would be expended in the Agency's budget with the stipulation that it be used in the Hazardous Waste Program.

Vote: Motion carried unanimously by voice vote.

{Tape: 2; Side: B; Approx. Time Counter: 7 - 9.2}

Mr. Welch claimed to have made a mistake in DP 5024. The DP was supposed to be a biennial appropriation.

Barbara Smith informed that on the cost sheet it was input as one which could be taken to be biennial.

Doug Schmitz asserted that he thought biennial would be appropriate. He noted that it wouldn't change anything just give them more time to make sure the database was up and running and correct.

Motion/Vote: REP. MUSGROVE moved that DP 5024 BE AMENDED to be biennial. Motion carried unanimously by voice vote.

{Tape: 2; Side: B; Approx. Time Counter: 9.2 - 11.3}

Ms. Smith clarified what had been asked of her in regard to DP 4014. As she understood it REP. MUSGROVE wanted the language provided by DEQ regarding this DP.

CHAIRMAN RIPLEY noted that there was no reason to close the Department if DP 4014 still had to be addressed.

Ms. Smith discussed the agenda noting what was ahead for the committee over the following days.

{Tape: 2; Side: B; Approx. Time Counter: 11.3 - 14.8}

Mr. Schmitz noted that the previous day there had been some discussion on the St. Mary's Project and he had indicated that he would get back to the committee with information. He informed the committee that the Budget Director had talked with Director Sexton indicating that the Budget Office and the Governor could only support one FTE instead of the two Hal Harper had talked about. He also mentioned that there was no General Fund available for the position and that the recommendation be that RIT be used even if it required reprioritization.

Ms. Smith followed up on Mr. Schmitz' comments. She proposed an alternative given to her by DNRC which would significantly reduce the employees salaries. She attested that she had not talked with the Department since she had received Mr. Schmitz information so she was not sure which employee they were going to select or if they were still going to come forward with both of them.

Mr. Oppen provided some closing statements thanking the committee for their time and attention.

ADJOURNMENT

Adjournment: 10:00 A.M.

REP. RICK RIPLEY, Chairman

BRITT NELSON, Secretary

RR/bn

Additional Exhibits:

EXHIBIT ([jnh21aad0.PDF](#))